



INDIAN
NATIONAL
BAR
ASSOCIATION



Government of India
Ministry of Commerce & Industry
Department of Commerce



**REPORT OF THE BAR LEADERSHIP SUMMIT
ON
REFORMS IN THE INDIAN LEGAL SERVICES
SECTOR**

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(Prepared by CENTRE FOR TRADE AND INVESTMENT LAW, IIFT)

ORGANIZED BY INDIAN NATIONAL BAR ASSOCIATION

**IN ASSOCIATION WITH THE DEPARTMENT OF COMMERCE, MINISTRY OF
COMMERCE AND INDUSTRY**

**AND THE CENTRE FOR TRADE AND INVESTMENT LAW, INDIAN INSTITUTE OF
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EXECUTIVE SUMMARY

1. The **Bar Leadership Summit on Reforms in the Indian Legal Services Sector** was held on November 11, 2017 in New Delhi. Deliberations on reforms in domestic legal services sector began in late 2014 in the Inter Ministerial Group coordinated by the Ministry of Commerce and Industry which placed the subject of “opening up” in a holistic framework. The framework proposes to liberalize the sector in a *regulated, phased and sequential manner*.
2. The Summit provided a platform to the government as well as the stakeholders (litigation practitioners, corporate sector and non-litigious practitioners) to explore the opportunities and challenges.
3. During the Summit, representatives from different ministries of the government clarified that the Roadmap does not propose opening litigious practices to foreign lawyers and law firms. Litigious practice shall remain with the domestic practitioners. This clarification established the basis of constructive deliberations from policy makers and stakeholders, alike.
4. One of the major concerns emerging from discussions was the delay in legal procedure. Government officials as well as stakeholders agreed that speedy disposal of cases by the courts needs to be facilitated through the reforms to make legal sector more efficient.
5. A presentation on institutional arbitration and its working across the world gave the participants perspective about its benefits. Hon’ble Minister of Commerce and Industry, Mr. Suresh Prabhu also emphasized on the importance of alternative dispute settlement methods.
6. Most of the arbitration procedures involving Indian parties have a foreign seat of arbitration (for example, Singapore or Paris). The Roadmap aims to improve and promote institutional arbitration in India and make it an attractive seat of arbitration for both, Indian and foreign parties.
7. The legal services provided by law firms and in-house counsels were acknowledged and it was agreed that reforms must cater to the interests and concerns of these segments.
8. Other proposals included conducting legal audit of courts on their performance and efficiency and changes in legal education in India to enhance the quality and employability of legal practitioners.
9. The panelists looked at the possibilities to introduce mandatory requirements, like attending conferences and training programmes and making presentations, for lawyers and providing specialized education to law students to improve their competencies and credibility.
10. The participants were unanimous to assert that reforms in domestic legal services sector were needed. The policy makers, regulatory bodies and stakeholders brainstormed to

analyze the best possible way to liberalize the sector in a *regulated, phased and sequential manner*.

INAUGURAL SESSION

1. The Indian National Bar Association, in association with the Department of Commerce, Ministry of Commerce and Industry and Centre for Trade and Investment Law, Indian Institute of Foreign Trade, New Delhi organized the Bar Leadership Summit on Reforms in the Indian Legal Services Sector on November 11, 2017 at the SCOPE Complex, Lodhi Road, New Delhi.
2. The *Bar Leadership Summit on Reforms in the Indian Legal Sector* was inaugurated by Dr. Satya Pal Singh, Minister of State for HRD (Higher Education) in the presence of Mr. Suresh Chandra, Law Secretary, Ministry of Law and Justice, Dr. Subhash C. Kashyap, President, INBA and Mr. R. S. Suri, President, Supreme Court Bar Association, Ms. Sangeeta Saxena, Additional Economic Advisor, Department of Commerce, Ministry of Commerce and Industry and Dr. James J. Nedumpara, Professor and Head, Centre for Trade and Investment Law, IIFT.
3. Mr. Kaviraj Singh, Secretary General, INBA, introduced the aim and objectives of the Summit.
4. Dr. Subhash C. Kashyap delivered the Welcome Address and noted that reforms in the legal sector should include only reforms in the legal professions, but even reforms in the judiciary and the legal education system.
5. The Hon'ble Minister of Commerce and Industry Mr. Suresh Prabhu who addressed the meeting through a video message, stressed on the importance of alternative dispute resolution for commercial disputes. He emphasized that the legal practitioners should reduce the burden on the courts by exploring arbitration. The use of experts, pre-arranged processes and shorter time periods are some of the advantages of arbitration and mediation process. The Hon'ble Minister sought the support and contributions from the entire legal fraternity to make arbitration fruitful in India.
6. Hon'ble Minister of State for HRD (Higher Education), Dr. Satya Pal Singh stressed on the importance of law as an enabler of justice and spoke on the importance of impartiality and neutrality of the judicial system in India. He noted that the judicial system should focus on the difficulties faced by the victims in particular.
7. Mr. Suresh Chandra, Law Secretary, Ministry of Law and Justice, informed the Summit about steps taken by the Ministry of Law and Justice, along with the Department of Industrial Policy and Promotion (DIPP) in establishing new commercial courts in High Courts. Additionally, far reaching reforms are being deliberated in the field of arbitration and mediation. Other initiatives such as legal audit of courts on their performance and efficiency are under consideration. He said that India has huge potential to increase the size of its legal market, which is around \$9bn at present. He suggested that reforms in this sector could tie in with the Prime Minister's agenda of "reform, transform and perform".

8. Ms. Sangeeta Saxena, Additional Economic Advisor, Department of Commerce (DoC) spoke on the urgent need of diversification of the India's services export. She noted that the DoC looked at potential areas and the legal services sector was deliberated upon due to its immense potential to engage in services export. She emphasized that reforms in legal sector assume greater significance in view of government's policies such as "Make in India" and improvement in India's ranking in "Ease of Doing Business".
9. Mr. R. S. Suri, in his Vote of Thanks, expressed his appreciation that the Ministry of Law and Justice and the Department of Commerce have come under one roof to deliberate upon the reforms needed in the in the legal services sector. Mr. Suri also that the advantages of opening up the Indian legal services sector should be communicated to the various bar associations in India.

TECHNICAL SESSION I: CONDUCT OF ARBITRATION

10. Mr. Ashish Dolakia, Advocate chaired Technical Session I entitled "Conduct of Arbitration: A Journey Around the World". The panelists included Mr. Ganesh Chandru, Executive Partner, Lakshmikumaran & Sridharan, Mr. S. Ramaswamy, Chair, General Counsel Section, INBA and Mr. Zameer Nathani, Director Legal, Raymond Ltd. The session sought to provide the participants an introduction to institutional arbitration and international arbitration centres, and deliberated on the models best suited to make India a global centre for international commercial arbitration.
11. Mr. Ganesh Chandru spoke on the working of international arbitration centers globally. The first such institution covered by him was the International Chamber of Commerce's International Court of Arbitration (ICC), Paris. He stated that 966 new cases were administered by the ICC involving 3099 parties from 137 countries, out of which 60 cases involved Indian parties. Talking about the Singapore International Arbitration Centre (SIAC), Mr. Chandru stated that a majority of cases before SIAC involve Indian parties. He also introduced other international centres of arbitration like London Court of International Arbitration (LCIA), the American Arbitration Association (AAA) and the Permanent Court of Arbitration (PCA), to name a few. To make India a preferred seat of international arbitration, Mr. Chandru proposed that the concepts of Emergency Arbitrators (EAs) and "expedite procedure" should be made available to the parties for speedy disposal of their disputes.
12. Mr. S. Ramaswamy stressed on the importance of neutrality, independence and impartiality in arbitration. He suggested that through relevant amendments in the Arbitration Act, existing issues in arbitration could be mitigated. Talking about integrity in the arbitration process, Mr. Ramaswamy suggested that an arbitrator, while opting to arbitrate a dispute, must be diligent and consider his own efficiency, skillset and expertise.
13. Mr. Zameer Nathan raised the concern of judicial review and regulation of arbitration proceedings by courts. In this regard, he mentioned that the Hon'ble Supreme Court of India has acknowledged that if the seat of arbitration is in India and laws under the Arbitration Act apply, then judicial intervention could become fairly common. Similar practice of courts regulating the arbitration procedure subsists in the US and UK. He suggested the need for making arbitrations immune from judicial review.

TECHNICAL SESSION II: LEGAL SECTOR REGULATORY REFORMS

14. This session was chaired by Mr. Pranav Kumar, Principal Legal Counsel, Snapdeal. The panelists for this session were Mr. Sameer Chugh, Senior Vice President & Head Legal, Airtel, Mr. V. R. Kamalanathan, Secretary, Madras High Court Bar Association, Mr. SumesDewan, Managing Partner, LexFavios. The session focused on the concerns of India's domestic legal fraternity and finding the most suitable way in which reforms could be implemented.
15. Mr. Sameer Chugh said that most of the lawyers in India believe that regulations restrict their freedom to practice law. However, he stressed that this belief is questionable because regulating involves "streamlining what's to be done in a correct manner". The aim of regulation is to streamline and make things better and not to control and command the profession. He also suggested that a time-bound procedure to enforce contracts needs to be strictly implemented. If this happens, enforcing contracts through courts will become a lot easier. Steps in this direction could facilitate and attract foreign investment.
16. Mr. V. R. Kamalanathan stressed that amending the Advocates Act is the need of the hour if we have to progress towards allowing foreign law firms and lawyers to practice in India. Additionally, advocates in India need proper training to deal with cases involving foreign entities. In this regard, legal education and law schools must be monitored. Mr. Kamalanathan emphasized that litigious as well as non-litigious issues have significantly increased in India as a result of global trade in goods and services. As a result, law firms, Legal Process Outsourcing entities (LPOs) and in-house counsel have emerged in India to provide legal service to their clients. Hence, it is important to involve these entities also in the proposed reforms.
17. Mr. SumesDewan suggested that it is the right time for foreign law firms to come to India. Once these firms enter the Indian legal sector, they will bring with them expertise and employment opportunities provided they can engage Indian nationals. Mr. Dewan proposed that a separate regulator (like in the UK) might be needed on a national basis to represent law firms and in-house counsel.
18. On the issue of delay in legal procedure, Mr. Pranav Mehra suggested the need for time-bound disposal of cases.
19. The floor was opened to the participants for interaction. One of the suggestions from the floor was the need to introduce a set of regulations or practices (such as attending conferences, making presentations, and training programmes) for compulsory training along the lines prescribed by the Institute of Chartered Accountants of India (ICAI) for chartered accountants and the Institute of Company Secretaries of India (ICSI) for company secretaries.

TECHNICAL SESSION III: LIBERALIZATION OF THE INDIAN LEGAL SECTOR

20. The session was chaired by Mr. Kaviraj Singh, Secretary General, INBA, Mr. James P. Duffy III, Former Co-Chair, India Committee, American Bar Association, Prof. James J. Nedumpara, Professor and Head, Centre for Trade and Investment Law, Mr.

Vinod Diwakar, Advocate and Mr. Mukesh Butani, Partner, BMR Legal spoke in this session. The session focused on the Foreign Legal Consulting (FLC) regime, regulation of foreign law firms in India and the demand for Indian lawyers among foreign law firms and vice versa.

21. Mr. James P. Duffy began his address by reiterating that trade in services has become very important and that the definition of “services” is constantly changing. He acknowledged that legal services sector is growing rapidly and, hence, it is important to stay in touch with the changes. He noted that India’s strength lies in the fact that it is an English-speaking Common Law country. He suggested that foreign law firms could bring large business to India if they are permitted to provide legal services in India. He emphasized on the importance of domestic law firms building a strong close corporate working relationship with foreign law firms. Through the working relationships, domestic law firms could take the opportunity to enhance their presence among prospective foreign clients. Mr. Duffy also noted that there could be greater diffusion of skills and expertise in the event of opening up of the Indian legal services market.
22. Prof. James J. Nedumpara spoke on the possibility of Indian lawyers being hired by foreign law firms. He suggested that to make Indian lawyers attractive to the foreign law firms, India must produce “global Indian lawyers” who would possess the relevant skill set, expertise and exposure to work in a multicultural environment and specialized areas of law. In this regard, Prof. Nedumpara emphasized the importance of providing training in specialized fields of law once the fundamentals of law have been taught. He suggested that special skills and competencies, credibility, professional image, network-building, and cultural understanding of jurisdiction and professional ethics are a few skills required in the future generation of lawyers. Restrictions imposed by BCI on academicians from practicing needs to be removed because this hinders the interaction between academia and practice. Additionally, he suggested that capital and other resources must be provided by the State governments to National law schools and other institutions; he also stressed on the importance of faculty exchange, student exchange programmes and other collaborations between Indian and overseas institutions.
23. Mr. Vinod Diwakar, Advocate, stated that India has integrated with the world economy in a remarkable way. In the long run, liberalization of Indian legal services sector will provide a harmonious environment to domestic lawyers and law firms to work with foreign law firms. According to him, the resistance to reforms is unwarranted.
24. Mr. Mukesh Butani, Partner, BMR Legal, emphasized that legal services is not a service where can practice in isolation of other professions. The benefits of obtaining multifaceted skillset should be acknowledged. He stated that India could face certain stumbling blocks on its way to opening up the legal services sector. However, this should not be a deterrent. Instead, through consultations and dialogues, India should be capable of overcoming such obstacles. Service sectors have significantly generated employment and improved the per capita income. Similar trends could be expected out of the liberalization in legal services. The idea of reforms lies in dialogue and interaction.

25. Mr. KavirajSingh added that there is a need to have a positive and constructive dialogue to streamline laws and the regulatory regime. It should be backed by merit and timely ideas so that deliberations are fruitful and constructive.
26. Thereafter, Mr. SumesDewanmade a presentation titled “*Indian Legal Sector: Myth v. Reality*” to discredit some misconceptions related to non-litigious practices in India and foreign law firms.
27. In his Closing Remarks, Mr. V. R. Ramaswamy stated that “change” is the need of the hour. Young professionals have a different approach towards the practice of law and in this regard, we should provide them with prospects to benefit from the opportunities that might arise through an open legal services sector. The benefits which India could gain through liberalization of legal services sector are huge and the opportunity should not be missed.

CONCLUSIONS AND WAY FORWARD

The framework proposes to liberalize the domestic legal services sector in a *regulated, phased and sequential manner*. In this regard, the Bar Leadership Summit provided a platform for the legal community, government, regulators and stakeholders to come under one roof and contemplate the areas where reforms are warranted. The Summit was, and large, successful in addressing the concerns of the litigation lawyers. A message was communicated that while reforms are needed in all aspects of the legal sector, the focus on trade liberalization should be limited to the corporate law sector, especially law firms, LPO and other transnational delivery of legal services.

In view of this clarification, the participants generally agreed that the domestic legal services sector is in an urgent need of reforms. The following areas were identified for further deliberations and reforms:

- Selected liberation of the legal services in non-litigious services;
- Support for Institutional arbitration in India;
- Appointment of emergency arbitrators for providing immediate relief; the need for introducing expedited or fast track procedure in an institutional arbitral mechanism;
- Making electronically produced evidence admissible in arbitration proceedings;
- Recognition and separate regulatory framework for in-house counsel;
- The need for mandatory continuing professional development and post-qualification training and education requirements, such as attending conferences and training programmes, and making presentations, for lawyers to improve their competencies and credibility;
- Adopting the steps to conduct legal audit of courts; and
- Reforms in legal education to make Indian lawyers employable in foreign law firms.